

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE A.SELVAM

Criminal Appeal No.1079 of 2007

Chella Muthukumar

... Appellant

vs.

State by Deputy Superintendent of Police,
Sirkali
(Crime No.2/2007, Vaitheeswarankoil PS)

... Respondent

Criminal Appeal filed under Section 374(2) of Cr.P.C., against the conviction and sentence imposed on the appellant by the First Additional Sessions Judge (PCR), Thanjavur in Special Sessions Case No.70 of 2007 dated 8.10.2007.

For appellant : Mr.S.Kalyanaraman
For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor.

JUDGMENT

The conviction and sentence dated 8th day of October, 2007 passed in Special Sessions Case No.70 of 2007 by the First Additional District and Sessions Court (Protection of Civil Rights), Thanjavur are being challenged in the present Criminal Appeal.

2. The case of the prosecution is that the defacto complainant by name Suresh Kumar belongs to Scheduled Caste. The accused 1 and 2 are none other than the son and father and they are caste Hindus. On 1.1.2007 at about 20.30 hrs., in Vaitheeswarankoil near Poosamuthu Nadi Jothidam, both the accused have attacked the defacto complainant by using cudgel and thereby caused injuries on his person. During occurrence, both of them have uttered the caste of the defacto complainant and also threatened him by way of saying that they would kill him before dawn. After occurrence, the defacto complainant has given a complaint and the same has been registered in Crime No.2 of 2007. The complaint alleged to have been given by the defacto complainant has been marked as Ex.P.3.

3. On receipt of Ex.P.3, the Investigating Officer, viz., P.W.9 has taken up investigation, examined connected witnesses

and also obtained necessary Community Certificates and after completing the investigation, has laid a final report on the file of the Judicial Magistrate Court, Sirkali and the same has been taken on file in P.R.C.No.4 of 2007.

4. The Judicial Magistrate, Sirkali, after considering the facts that the offences alleged to have been committed by the accused are triable by Sessions Court, has committed the case to the trial Court and the same has been taken on file in Special Sessions Case No.70 of 2007.

5. The trial court, after hearing arguments of both sides and upon perusing the relevant documents, has framed first charge against both the accused under Section 323 of the IPC, second charge against them under section 3(1)(x) of the SC and ST Act and third charge against them under section 506(i) of IPC and the same have been read over and explained to them. The accused have denied the charges and claimed to be tried.

6. On the side of the prosecution, P.Ws.1 to 9 have been examined and Exhibits 1 to 10 have been marked.

7. When the accused have been questioned under Section 313 of the Criminal Procedure Code, as respects the incriminating materials available in evidence against them, they denied their complicity in the crime. No oral and documentary evidence have been adduced on the side of the accused.

8. The trial court, after hearing arguments of both sides and upon perusing the relevant evidence available on record, has found the first accused guilty under Section 323 of the IPC and imposed a fine of Rs.1,000/- with usual default clause. Against the conviction and sentence passed by the trial court, the present Criminal Appeal has been filed at the instance of the first accused as appellant.

9. The learned counsel appearing for the appellant/first accused has contended that in the instant case, on the side of the prosecution, the persons, namely Ashok, Suresh Kumar and Elangovan have been examined as P.Ws.1, 2 and 6 and all of them are closely related to the defacto complainant and since the said prosecution witnesses are inter related to each other, their evidence cannot be believed in and further, the Doctor, who examined the defacto complainant, has adduced evidence as P.W.4 and her opinion is that if the defacto complainant has been attacked by a Stick, abrasion would not be caused and the same has belied the case of the prosecution and the trial court, without considering the vital infirmities found on the side of the prosecution, has erroneously found the first accused guilty under section 323 of IPC and therefore, the conviction and sentence passed by the trial court are liable to be set aside.

10. The learned Additional Public Prosecutor appearing for the respondent has contended that in the instant case, the defacto complainant is nothing but an injured witness and his specific evidence is that in the place of occurrence, the first accused has attacked him by using Cudgel. The evidence given by the defacto complainant has been clearly corroborated by P.Ws.1, 2 and 6 and all of them have consistently stated in their evidence that in the place of occurrence, P.W.5, defacto complainant has been attacked by the first accused and in fact, the Cudgel alleged to have been used by the first accused has not been shown to the Doctor and under the said circumstances, she would say her opinion to the effect that if the defacto complainant has been attacked by a Stick, he would not have sustained abrasion and the same would not militate the case of the prosecution and the trial court, after considering the available evidence on record, has rightly found the first accused guilty under section 323 of IPC and therefore, the conviction and sentence passed by the trial court do not warrant interference.

11. The consistent case put forth on the side of the prosecution is that in the place of occurrence, both the accused have attacked the defacto complainant, viz., P.W.5 by using Cudgel. The trial court has disbelieved the evidence given in respect of the second accused. In fact, the evidence given by the defacto complainant has been clearly corroborated by P.Ws.1, 2 and 6.

12. It is true that P.Ws.1, 2, 5 and 6 are interrelated to each other and also belonging to the same caste. Simply because the other eye witnesses are related to the defacto complainant, their evidence cannot be rejected nor eschewed. Therefore, the first limb of argument put forth on the side of the appellant/first accused is sans merit.

13. The second contention put forth on the side of the appellant/first accused is that P.W.4, the Doctor, who examined the defacto complainant, has opined that if a Stick is used in the occurrence, definitely the defacto complainant would not have sustained abrasion.

14. As rightly pointed out on the side of the prosecution, the Stick alleged to have been used by the first accused in the place of occurrence has not been seized. It is nothing but a fault on the part of the Investigating Officer. If really P.W.4 has seen the Stick actually used in the occurrence, definitely she would not have given such kind of opinion and further the opinion given by P.W.4 is not a substantive piece of evidence. Therefore, the second contention put forth on the side of the appellant/first accused also goes out without merit.

15. It is seen from the records that due to overtacts alleged to have been committed by the first accused, the defacto complainant has sustained only simple injuries. Considering the fact that the defacto complainant has sustained only simple injuries, this Court is of the view to reduce the quantum of fine amount imposed by the trial court as stated infra and to that effect, the Criminal Appeal is liable to be allowed in part.

In fine, this Criminal Appeal is allowed in part. The conviction passed under section 323 of IPC against the appellant/first accused in Special S.C.No.70 of 2007 by the trial court is confirmed. However, the quantum of fine amount imposed by the trial court under section 323 of IPC is modified as follows:-

"The appellant/first accused is directed to pay a fine amount of Rs.500/- (Rupees five hundred only) instead of Rs.1,000/-. If the appellant/first accused has paid the entire fine amount of Rs.1,000/-, he is entitled to get refund of Rs.500/-.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

ajr

To :

1. First Additional Sessions Judge (PCR), Thanjavur
2. The Judicial Magistrate, Judicial Magistrate Court, Sirkali.
3. Do Thro, Chief Judicial Magistrate, Nagappattinam.
4. The Deputy Superintendent of Police, Sirkali
5. The Public Prosecutor, High Court, Chennai

CrI.A.No.1079 of 2007

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